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Safeguarding Liberty, Justice & the Rule of Law

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Dear Representative:

I am writing on behalf of The Constitution Project (TCP) to urge you to support Ranking Member Adam Smith's amendment to the FY2015 National Defense Authorization Act (FY15NDAA) that would remove the blanket ban on transferring individuals from the detention facility at Guantanamo Bay, Cuba into the United States.

In its current form, the bill prohibits U.S. transfers for any purpose, including trial and emergency medical care (section 1033), and bars the use of funds to construct or modify facilities in the U.S. to house Guantanamo detainees (section 1032).

Detainees who can be prosecuted in federal courts should be. Our established federal judicial system has safely and effectively handled nearly 500 terrorism cases since 9/11, and it continues to do so. Those cases have produced valuable intelligence – one high profile criminal defendant has been described by U.S. officials as an "intelligence watershed." By contrast, military commissions are moving at a glacial pace amidst a sea of controversy. Of the seven convictions secured in military commissions to date, two have been overturned by the D.C. Circuit Court of Appeals and the trial of the 9/11 perpetrators remains far off. Because those D.C. Circuit decisions narrowed military commissions' jurisdiction, federal courts may now be the *only* venue available for trying some detainees.

The FY15NDAA would also bar even temporary transfers to the U.S. for emergency or critical medical treatment that cannot be provided at Guantanamo. According to the SOUTHCOM Commander, the medical issues of the aging detainee population are increasing in scope and complexity. The U.S. is responsible for providing detainees in its custody with adequate medical care, which serves both our humanitarian and security interests. That obligation will become increasingly difficult – and costly – to satisfy without the flexibility to transfer to the U.S. aging detainees who present health problems that Guantánamo medical staff is not equipped to handle.

The status quo at Guantánamo Bay is not sustainable. At a time of deep budget cuts and furloughs at the Department of Defense, the Pentagon spends nearly \$2.9 million per detainee annually. Guantanamo continues to undermine our national security by serving as a recruiting tool for those who wish us harm and by damaging counterterrorism cooperation with allies in ways that result in lost intelligence opportunities. And as the war in Afghanistan winds to a close, there are serious questions about the extent to which the United States can continue to claim detention authority under the laws of war.

Guantanamo should be closed responsibly. Blanket restrictions on U.S. transfers obstruct that process and should be removed. To that end, **TCP urges you to vote "YES" on the Amendment sponsored by HASC Ranking Member Adam Smith to strike sections 1032 and 1033 from the FY15NDAA.**

TCP's position on this legislation carries forward recommendations and principles from the report of our bipartisan [Task Force on Detainee Treatment](#). If you have any questions, please do not hesitate to contact at me.

Sincerely,

Scott Roehm
Senior Counsel